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Alain Delache

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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/506,979
Filing Date: September 08, 2004
Appellant(s): DELACHE ET AL.

**MAILED
JUN 28 2007
GROUP 3700**

Stephen G. Adrian
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 1st, 2006 appealing from the Office action mailed December 28th, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2). *Related Appeals and Interferences*

There are no other prior or pending appeals, interferences or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal as stated in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

An amendment after final has been filed however, the appealed claims does not contain the proposed amendments.

(5) *Summary of Claimed subject matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of rejection to be reviewed on appeal*

The ground of rejection set forth in the appeal brief is correct.

(7) *Claim Appendix*

The appealed claims in the appendix of the brief are correct.

(8) *Evidence relied upon*

2004/0187870 Matthews et al. 09-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Original claims 9-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Matthews et al. (US 2004/0187870).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 9 through 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Matthews et al. (US 2004/0187870) based on provisional filing date of October 12th, 2001.

Referring to claim 9, Matthews discloses an apparatus that comprises a blower 40 (see figure 1 and page 3 paragraph [0054]) to provide the patient with air under a treatment pressure, a control unit 106 (see figure 2 and page 5 paragraph [0077]) to adjust the pressure delivered by the blower at the level of the mask, a ramp module (see figure 2 and page 6 paragraph [0080]) connected to the control unit in order to provide the control unit with a value of pressure P_M to settle at the mask, so that when the apparatus starts functioning, the pressure progressively rises until the pressure of treatment P_r , the rise of pressure until the pressure of treatment P_r corresponding to a ramp period (see page 7 paragraph [0096]); and a comparator (see page 7 paragraph [0094]) connected to the ramp module, at least one means for detecting the patient's breathing parameters during the ramp period and sending them to the comparator such that the

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comparator is able during this ramp period to determine whether an event occurs in patient's breathing based on the breathing parameters and to send the corresponding data to the ramp module which provides the control unit with a value of pressure P_M that will speed up with respect of time during this ramp period, so that the rise of pressure at patient's mask is accelerated within the same ramp period.

Referring to claim 10, Matthews discloses an apparatus wherein the ramp module provides the value of pressure being a linear function of time wherein an increase coefficient is constant, the ramp module increasing that coefficient of a constant value When the control unit sends a data corresponding to the event.

Referring to claim 11, Matthews discloses an apparatus wherein the value of pressure has always maximum and/or minimum limits so that the increase of pressure is also limited in minimum and/or maximum (see page 7 paragraph [0096]).

Referring to claim 12, Matthews discloses an apparatus wherein the ramp module comprises a memory where a minimum coefficient (K_{srp}) is stored, the ramp module always maintaining the coefficient (K_{srp}) equal or greater than the minimum coefficient (K_{srp}), so that the ramp module provides the control unit with a value of pressure (P_m) always greater than a minimum limit.

Referring to claim 13, Matthews discloses an apparatus wherein the ramp module comprises a memory where a maximum coefficient (K_{mrp}) is stored, the ramp module always maintaining the coefficient (K_{rp}) equal or less than the maximum coefficient (K_{mrp}), so that the ramp module provides the control unit with a value of pressure (P_m) always less than a maximum limit.

Referring to claim 14, Matthews discloses an apparatus wherein the means for detecting the patient's breathing parameters enable the control unit to compute the air flow at patient's mask, the comparator determining whether an event is occurring with the airflow parameter or shape.

Referring to claim 15, Matthews discloses an apparatus wherein the ramp module increases the value of pressure (P_m) when an anomaly in patient's breathing is detected.

Referring to claim 16, Matthews discloses an apparatus wherein the anomaly is either snoring or apnea.

Referring to claim 17, Matthews discloses an apparatus wherein the ramp module increases the value of pressure (P_m) when the patient's breathing and asleep breathing or when they correspond to a stable frequency of breathing.

(10) Response to Argument

In response to applicant's argument that Matthews does not disclose a control unit to adjust the pressure delivered by the blower at the level of the mask; it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Also the term "at the level of the mask" in claim 9 can be defined as a specific event or condition and as stated by Matthews on page 5 paragraph [0072] "... While in control, each controller treats the specific event/condition by performing its control functions, such as adjusting the pressure output from the pressure support system via the pressure generating system...". Therefore, the control unit of Matthews does adjust the pressure delivered by the blower at the level of the mask.

In response to applicant's argument that Matthews does not disclose a ramp module that is connected to the control unit in order to provide the control unit with a value of pressure P_M to settle at the mask, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Exparte Masham*, 2 USPQ2d 1647 (1987). In a broad sense the ramp module 118 of Matthews is connected to the control unit 106 of Matthews electronically (see page 6 paragraphs [0079], [0080] and [0081]).

In response to applicant's argument that Matthews fails to teach a comparator connected to the ramp module (the comparator 140 is connected to the ramp module electronically; if the applicant had stated that the comparator is located within and directly connected to the ramp module as shown in applicant's figure 1, the examiner would have allowed the case. However since the applicant claimed that the comparator is connected to the ramp module, in a broad sense the comparator is connected to the ramp module electronically), at least one means for detecting the patient's breathing parameters (snore monitoring module 142 is defined as means for detecting patient's breathing parameters (snore events) see page 7 paragraph [0094]) during the ramp period and sending them to the comparator such that the comparator is able during this ramp period to determine whether an event occurs in patient's breathing based on the breathing parameters and to send the corresponding data to the ramp module which provides the control unit with values of pressure P_M that will speed up with respect of time during this ramp period (inherently if the control is given to the snore controller and if there is an increase in pressure, there will be data sent to the ramp module within the ramp period as stated on page 7 paragraphs [00941, [0095] and [00961).

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For the above reasons, it is believed that the rejections should be sustained.



(11) *Related Proceeding(s) Appendix*

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Nihir Patel 
June 12th, 2007

Conferees
Patricia Bianco 
Steven Garbe 

Stephen G. Adrian
WESTERMAN, HATTORI,
DANIELS & ADRIAN, LIP
1250 Connecticut Avenue NW, Suite 700
Washington D.C. 20036